

ARTICLE 24:14
EARLY INTERVENTION PROGRAM

Chapter

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CHAPTER 24:14:01
DEFINITIONS

Section

24:14:01:01 Definitions.

24:14:01:02 ~~Foster parent~~ Repealed.

24:14:01:03 Parent.

24:14:01:01. Definitions. Terms used in this article mean:

(1) "Contractor," a public or private nonprofit agency, organization, institution, Indian tribal organization, or private individual, who has been awarded a department contract for the provision of service coordination pursuant to chapter 24:14:09;

(2) "Days," calendar days;

(3) "Department," the Department of Education ~~and Cultural Affairs~~;

(4) "Department secretaries," the secretary of each of the following departments: Education ~~and Cultural Affairs~~, Health, Human Services, and Social Services;

~~(5) "Division," the Division of Education Services and Resources;~~

~~(6)~~ (5) "Early intervention program," the total effort in the state that is directed at meeting the needs of children eligible under this article and their families;

~~(7)~~ (6) "Early intervention services," the services listed in chapter 24:14:08;

~~(8)~~ (7) "Evaluation," the procedure used by qualified personnel to determine a child's initial and continuing eligibility pursuant to this article, consistent with the definition of infants and toddlers with disabilities in § 24:14:07:02, including determining the status of the child in each of the developmental areas listed in § 24:14:07:03;

(8) "Homeless children," the term, homeless children and youths, as defined in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq., as amended to January 1, 2008;

(9) "Individual family service plan team," "IFSP team," as used in the article, the term, individual family service plan team, or, IFSP team, means the group of individuals described in § 24:14:13:06;

(10) "Individual family service plan," "IFSP," a written plan for providing early intervention services to a child and to the child's family pursuant to chapter 24:14:13;

(11) "Individuals with Disabilities Education Act," "IDEA," the federal Individuals with Disabilities Education Act as codified at 20 U.S.C. §§ 1411 to 1420, inclusive, ~~June 4, 1997~~ December 3, 2004, and 34 C.F.R. Part 300, ~~Part 301, and Part 303~~ published in the Federal Register on ~~March 12, 1999~~ August 14, 2006;

(12) "Multidisciplinary," the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities and the development of the individual family service plan;

(13) "Native language," when used with reference to persons of limited English proficiency, the language or mode of communication normally used by the parent of a child eligible under this article;

(14) "Natural environment," settings that are natural or normal for the child's age peers who have no disability;

(15) "Nonpublic agency service provider," a private agency or individual involved in the provision of early intervention services;

~~(16) "Parent," a natural or adoptive parent, a guardian, a person acting in the place of a parent such as a grandparent or stepparent with whom the child lives or a person who is legally responsible for the child's welfare, or a surrogate parent who has been appointed in accordance with this article, but not the state if the child is a ward of the state;~~

~~(17)~~ (16) "Part B," Part B of the Individuals with Disabilities Education Act, which establishes the special education program for children with disabilities aged 3 to 21, inclusive;

~~(18)~~ (17) "Part C," Part C of the Individuals with Disabilities Education Act, which establishes the early intervention program for infants and toddlers with disabilities;

~~(19)~~ (18) "Personally identifiable information," information that includes the following:

- (a) The name of the child, the child's parent, or other family members;
- (b) The address of the child;
- (c) A personal identifier, such as the child's or parent's social security number;

or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty;

~~(20)~~ (19) "Public agency," the department or another political subdivision of the state that is responsible for providing early intervention services to children eligible under this chapter and to their families;

~~(21)~~ (20) "Qualified personnel," persons who have met state-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person provides early intervention services;

~~(22)~~ (21) "Unit," a 15-minute measurement of time; and

~~(23) "Usual and customary charge," the individual provider's normal charge to the general public for a specific service on the day the service was provided.~~

(22) "Ward of the state," a child who, as determined by the state where the child resides, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in § 24:14:01:03.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:01:02. Foster parent. ~~A foster parent may act as a parent under Part C of the Individuals with Disabilities Education Act if:~~

~~(1) The natural parents' authority to make decisions required of parents under IDEA has been extinguished under state law;~~

~~(2) The foster parent has an ongoing, long term parental relationship with the child;~~

~~(3) The foster parent is willing to make the decisions required of parents under the Individuals with Disabilities Education Act; and~~

~~(4) The foster parent has no interest that would conflict with the interests of the child~~ Repealed.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: ~~SDCL 13-37-1.1.~~

Law Implemented: ~~SDCL 13-1-23, 13-14-1, 13-37-1.1.~~

24:14:01:03. Parent. For the purposes of this article, the term, parent, means:

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

(4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with chapter 24:14:14.

Except as provided below, the biological or adoptive parent, if attempting to act as the parent under this article and if more than one party is qualified under this section to act as a parent, is presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons under subdivisions 1 to 4, inclusive, of this section to act as the parent of a child or to make educational decisions on behalf of a child, then the person or persons are deemed to be the parent for purposes of this section.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

CHAPTER 24:14:02

GENERAL ADMINISTRATION

Section

- 24:14:02:01 Applicability.
- 24:14:02:02 Entitlement to services -- Payment for services.
- 24:14:02:03 Program administration.
- 24:14:02:04 Program supervision.
- 24:14:02:05 Monitoring of program.
- 24:14:02:05.01 State monitoring -- Primary focus.
- 24:14:02:05.02 State monitoring -- Quantifiable indicators and priority areas.
- 24:14:02:05.03 State performance plan -- General.
- 24:14:02:05.04 State performance plan -- Data collection.
- 24:14:02:05.05 State use of targets and reporting.
- 24:14:02:05.06 State enforcement -- Determinations.
- 24:14:02:06 Repealed.
- 24:14:02:07 Central directory of information.
- 24:14:02:08 Central directory requirements.
- 24:14:02:09 Public awareness program.
- 24:14:02:10 Program requirements.

24:14:02:02. Entitlement to services -- Payment for services. Eligible children and their families, including Indian children with disabilities and their families residing on a reservation geographically located in the state, homeless children with disabilities

and their families, and children with disabilities who are wards of the state, are entitled to appropriate early intervention services based on scientifically based research, to the extent practicable, in accordance with an individual family service plan. Payment for services is as set out in chapter 24:14:04.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:03. Program administration. The Department of Education ~~and Cultural Affairs~~ is the lead agency for the program and is responsible for the administration of this article.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:04. Program supervision. The ~~division~~ department is responsible for general supervision of the ~~early intervention~~ Part C program. The ~~division~~ department shall monitor all programs and activities used by the state to implement the provisions of this article, whether or not such programs or activities receive assistance made available under the ~~early intervention~~ Part C program, to ensure statewide compliance.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:05. Monitoring of program. In meeting the requirements of this article, the ~~division~~ department shall use the following methods of administering the program:

(1) Monitoring agencies, institutions, and organizations used by the state to carry out the provisions of this article;

(2) Enforcing any obligations imposed on those agencies under the Individuals with Disabilities Education Act, Part C, and this article;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correcting deficiencies that are identified through monitoring as soon as possible and in no case later than one year after the department's identification of noncompliance.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:05.01. State monitoring - - Primary focus. The department shall monitor the implementation of this article, enforce this article in accordance with §§ 24:14:02:05 and 24:14:02:05.06 and annually report on performance under this article. The primary focus of the department's monitoring activities shall be on:

(1) Improving early intervention results and functional outcomes for all children with disabilities; and

(2) Ensuring that Part C programs meet the program requirements under Part C of the IDEA, with a particular emphasis on those requirements that are most closely related to improving early intervention results for children with disabilities.

As a part of its responsibilities under this section, the department shall use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in § 24:14:02:05.02 and the indicators established by the U.S. Secretary of Education for the state performance plan.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:05.02. State monitoring - - Quantifiable indicators and priority areas. The department shall monitor each Part C program using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

- (1) Provision of early intervention services in natural environments; and
- (2) Department exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in this article and article 24:05.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:05.03. State performance plan - - General. The department shall have in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part C of the IDEA, and describes how the department will improve such implementation.

The department shall submit the state's performance plan to the U.S. Secretary of Education for approval in accordance with the approval process described in Part C of the IDEA.

The department shall review its state performance plan at least once every six years, and submit any amendments to the U.S. Secretary of Education.

As part of the state performance plan, the department shall establish measurable and rigorous targets for the indicators established by the U.S. Secretary of Education under the priority areas described in § 24:14:02:05.02.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:05.04. State performance plan - - Data collection. The department shall collect valid and reliable information as needed to report annually to the U.S. Secretary of Education on the indicators established by the U.S. Secretary of Education for the state performance plan.

If the U.S. Secretary of Education permits the department to collect data on specific indicators through state monitoring or sampling, and the department collects the

data through state monitoring or sampling, the department shall collect data on those indicators for each Part C program at least once during the period of the state performance plan.

Nothing in Part C of the IDEA authorizes the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the IDEA.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:05.05. State use of targets and reporting. The department shall use the targets established in the state's performance plan and the priority areas described in § 24:14:02:05.02 to analyze the performance of each Part C program in implementing Part C of IDEA.

The department shall:

(1) Report annually to the public on the performance of each Part C program on the targets in the state performance plan no later than 60 days following the department's submission of its annual performance report to the U.S. Secretary of Education; and

(2) Make the state performance plan, annual performance reports and reports on each Part C program available through public means, including by posting on the website of the department, distribution to the media, and distribution through public agencies.

If the department collects performance data through state monitoring or sampling, the department shall include in its report the most recently available performance data on each Part C program, and the date the data were collected.

The department shall report annually to the U.S. Secretary of Education on the performance of the state under the state performance plan.

The department may not report to the public or the U.S. Secretary of Education any information on performance that would result in the disclosure of personally identifiable information about individual children, or that is insufficient to yield statistically reliable information.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:05.06. State enforcement - - Determinations. On an annual basis, based on local Part C program performance data, information obtained through

monitoring visits, and other information available, the department shall determine whether each meets the requirements and purposes of Part C of the IDEA.

If the department determines, for two consecutive years, that a Part C program intervention program needs assistance in implementing the requirements of Part C of the IDEA, the department shall take one or more of the following actions:

(1) Advise the Part C program of available sources of technical assistance that may help the program address the areas in which the program needs assistance. Assistance may include assistance from the department's Part C program, other offices of the department, other state agencies, technical assistance providers approved by the department, and other federally-funded nonprofit agencies. The department shall require the program to work with appropriate entities. Such technical assistance may include:

(a) The provision of advice by experts to address the areas in which the program needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically-based research;

(c) Designating and using distinguished administrators, service coordinators, service providers, and other personnel from the Part C program to provide advice, technical assistance, and support; and

(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the IDEA, and private providers of scientifically based technical assistance: and

(2) Identify the Part C program as a high-risk grantee and impose special conditions on the program's grant under Part C of the IDEA.

If the department determines, for three or more consecutive years, that a Part C program needs intervention in implementing the requirements of Part C of the IDEA, the department shall require the program to prepare a corrective action plan if the department determines that the program should be able to correct the problem within one year or withhold, in whole or in part, any further payments to the program under Part C of the IDEA. The department may also take any of the actions described in subdivisions (1) and (2) of this section.

Notwithstanding the provisions of this section, if the department determines that a Part C program needs substantial intervention in implementing the requirements of Part C of the IDEA or that there is a substantial failure to comply with any condition of the program's eligibility under Part C of the IDEA, the department shall withhold, in whole or in part, any further payments to the program under Part C of the IDEA.

Nothing in this section restricts the department from using any other authority available to it to monitor and enforce the requirements of Part C of the IDEA.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:06. Compliance monitoring reports. Repealed.

Source: 20 SDR 223, effective July 7, 1994; repealed, 28 SDR 105, effective January 31, 2002.

24:14:02:07. Central directory of information. The ~~division~~ department shall develop a central directory that includes information about the following:

- (1) Public and private early intervention services, resources, and experts available in South Dakota;
- (2) Research and demonstration projects being conducted in South Dakota; and

(3) Professional and other groups, including parent support groups and advocate associations, that provide assistance to children eligible under this chapter and their families.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:02:09. Public awareness program. The ~~division~~ department shall develop a public awareness program that focuses on early intervention for children. The program shall include the preparation and dissemination to all primary referral sources, especially hospitals and physicians, of materials for parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services in this article and article 24:05. The public awareness program shall provide information about the following:

- (1) The state's ~~early intervention~~ Part C program;
- (2) The child find system, § 24:14:10:01, including:
 - (a) The purpose and scope of the system;
 - (b) How to make referrals; and

(c) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(3) The central directory established pursuant to § 24:14:02:07.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

CHAPTER 24:14:03

PROCEDURES FOR RESOLVING COMPLAINTS

Section

24:14:03:01 Repealed.

24:14:03:01.01 Complaint.

24:14:03:01.02 Remedies.

24:14:03:02 Agencies subject to complaints.

24:14:03:03 ~~Filing of complaint~~ Repealed.

24:14:03:04 Procedures for resolving complaints.

24:14:03:05 Time limits.

24:14:03:06 Repealed.

24:14:03:07 ~~Appeal~~ Repealed.

24:14:03:08 Information about complaint procedures.

24:14:03:09 Complaints and due process hearings.

24:14:03:01.01. Complaint. A complaint is a written signed statement by an individual or organization including an individual or organization from another state containing a statement that the ~~state education agency or its subgrantee~~ department, a public agency, or a nonpublic service provider has violated a requirement of federal or state statutes, rules, or regulations that apply to a program and a statement of the facts on which the complaint is based.

The complaint must allege a violation that occurred not more than one year before the date the complaint is received by the ~~division, unless a longer period is reasonable because the violation is continuing or because the complainant is requesting compensatory services for a violation that occurred not more than three years before the date the complaint is received by the division~~ department. The written signed statement shall also include:

(1) The signature and contact information for the complainant; and

(2) If alleging violations with respect to a specific child:

(a) The name and address of the residence of the child;

(b) The name of the early intervention service provider serving the child;

(c) A description of the nature of the problem of the child, including facts related to the problem; and

(d) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:03:01.02. Remedies. In resolving a complaint in which it has found a failure to provide appropriate services, the ~~division~~ department, pursuant to its general supervisory authority under Part C of the IDEA, must address:

(1) ~~How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family~~ The failure to provide appropriate services including

corrective action appropriate to address the needs of the infant or toddler with a disability and the infant's or toddler's family who is the subject of the complaint; and

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:03:02. Agencies subject to complaints. The ~~division~~ department shall take complaints under this article that concern violations by:

(1) Any public agency in the state that receives funds under Part C;

(2) Other public agencies that are involved in the state's ~~early intervention~~ Part C program; or

(3) Private service providers that receive funds pursuant to this article under a contract from a public agency to carry out a given function or to provide a given service required under Part C.

The party filing the complaint shall forward a copy of the complaint to the public agency or nonpublic service provider serving the child at the same time the party files the complaint with the department.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:03:03. Filing of complaint. ~~An individual or organization may file a written signed complaint. The complaint must include a concise statement of the facts allegedly constituting a violation of this article~~ Repealed.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: ~~SDCL 13-37-1.1.~~

Law Implemented: ~~SDCL 13-1-23, 13-14-1, 13-37-1.1.~~

Cross Reference: ~~Special education, article 24:05.~~

24:14:03:04. Procedures for resolving complaints. The complaint resolution procedure is as follows. If the complaint is against a ~~subgrantee~~ public agency or nonpublic service provider, the following steps shall be taken:

(1) The state director of ~~special education~~ the Part C program shall appoint a complaint investigation team from the ~~division's Office of Special Education~~ department. The team may conduct an independent on-site investigation if it determines that one is necessary;

(2) The complaint team shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) The department, a public agency, or a nonpublic service provider shall be given the opportunity to respond to the complaint, including at a minimum:

(a) At the discretion of the department, a proposal to resolve the complaint; and

(b) An opportunity for a parent who has filed a complaint and the department, a public agency, or a nonpublic service provider to voluntarily engage in mediation consistent with this article;

~~(3)~~ (4) The complaint team shall make a recommendation to the state director of ~~special education~~ the Part C program;

~~(4)~~ (5) After reviewing all relevant information, the state director of ~~special education~~ the Part C program shall ~~determine~~ make an independent determination as to whether the

complaint is valid, what corrective action is necessary to resolve the complaint, and the time limit during which correction action is to be completed. The state director of ~~special education~~ the Part C program shall submit a written report of the final decision to all parties involved;

~~(5)~~ (6) The written report shall address each allegation in the complaint, contain findings of fact and conclusions, and include reasons for the final decision;

~~(6)~~ (7) If corrective action is not completed within the time limit set, including technical assistance and negotiations, the ~~division~~ department shall withhold all federal funds applicable to the program until compliance with applicable federal and state statutes and rules is demonstrated by ~~the subgrantee~~ a public agency or a nonpublic service provider; and

~~(7)~~ (8) Documentation supporting the corrective actions taken by a ~~subgrantee~~ public agency or a nonpublic service provider shall be maintained by the ~~division's Office of Special Education~~ department's Part C program and incorporated into the state's monitoring process.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:03:05. Time limits. All complaints must be resolved within 60 days after receipt of the complaint by the state director of ~~special education~~ the Part C program except as stated in this section. The time limit of 60 days may be extended only under exceptional circumstances as determined by the state director of ~~special education~~ the Part C program, such as the need for additional time to provide necessary information. ~~An~~ Under these circumstances, an extension of time may not exceed 30 days in any one instance.

In addition, the 60-day time limit may be extended, if the parent, individual, or organization and the department, a public agency, or a nonpublic service provider involved in the complaint agree to engage in mediation in order to attempt to resolve the issues specified in the complaint.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:03:07. Appeal. ~~The division shall follow the procedure in SDCL chapter 1-26 on appeals and this chapter on complaints~~ Repealed.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: ~~SDCL 13-37-1.1.~~

Law Implemented: ~~SDCL 13-1-23, 13-14-1, 13-37-1.1.~~

24:14:03:08. Information about complaint procedures. ~~The Office of Special Education~~ Part C program shall inform parents and other interested individuals, including parent training centers, protection and advocacy agencies, ~~independent living centers,~~ and other appropriate entities about the state's complaint procedures by taking the following actions:

- (1) Conducting parent surveys through the state's monitoring process;
- (2) Providing copies of the state's procedures to parent and advocacy groups across the state;
- (3) ~~Notifying local school districts~~ public agencies and nonpublic service providers through statewide memoranda;
- (4) Presenting state procedures at statewide conferences; and
- (5) Disseminating copies to parent training centers, ~~independent living centers,~~ and other appropriate entities.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:03:09. Complaints and due process hearings. If a written complaint is received that is also the subject of a due process hearing under this article or contains multiple issues, of which one or more are part of that hearing, the ~~division~~ department must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this chapter.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the ~~division~~ department must inform the complainant to that effect. A complaint alleging a public agency's or a nonpublic service provider's failure to implement a due process decision must be resolved by the ~~division~~ department.

Source: 26 SDR153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

CHAPTER 24:14:04

FINANCIAL MATTERS

Section

- 24:14:04:01 Services provided at no cost.
- 24:14:04:02 Services subject to payment.
- 24:14:04:03 Fees.
- 24:14:04:04 Entitled services.
- 24:14:04:05 Identification and coordination of resources.
- 24:14:04:06 Federal funding source.
- 24:14:04:06.01 Proceeds from public or private insurance.
- 24:14:04:07 Interagency agreements.
- 24:14:04:08 Agency resolution of disputes.
- 24:14:04:09 Interagency dispute resolution procedures.
- 24:14:04:10 Payer of last resort.
- 24:14:04:11 Service provision during pendency of dispute.
- 24:14:04:12 Rate of payment for provision of early intervention services.
- 24:14:04:12.01 Reimbursement if travel is necessary solely to provide early intervention service.
- 24:14:04:12.02 Reimbursement for travel to place of other employment.
- 24;14:04:13 Reimbursement for travel time.
- 24:14:04:14 Mileage reimbursement.
- 24:14:04:15 Services provided by paraeducators.

- 24:14:04:16 Services provided by assistants.
- 24:14:04:17 Submission of bills.
- 24:14:04:18 State payment as payment in full.
- 24:14:04:19 Payment above established rate.
- 24:14:04:20 More than one service provided during the same unit of time.
- 24:14:04:21 More than one child receiving service at the same time.
- 24:14:04:22 Claim requirements.

24:14:04:01. Services provided at no cost. The ~~division~~ department shall provide or purchase the following services at no cost to parents:

- (1) The child find requirements in chapter 24:14:11;
- (2) Evaluation and assessment, including the functions related to evaluation and assessment;
- (3) Service coordination functions and activities; and
- (4) Administrative and coordinative activities related to the following:
 - (a) The development, review, and evaluation of individual family service plans; and
 - (b) Implementation of the procedural safeguards and other components of the statewide ~~system~~ program of early intervention services.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:02. Services subject to payment. Services subject to payment include the following:

- (1) Audiology services;
- (2) Family training, counseling, and home visits;
- (3) Health services necessary to enable the child to benefit from the other early intervention services;
- (4) Nursing services;
- (5) Nutrition services;
- (6) Occupational therapy;
- (7) Physical therapy;
- (8) Psychological services;
- (9) Social work services;
- (10) Special instruction;
- (11) Speech and language pathology, sign language, and cued language services;
- (12) Transportation and related costs necessary to enable the child or the child's family to receive another early intervention service;
- (13) Vision services; and

(14) Assistive technology devices and services.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:03. Fees. The payment system and schedule of sliding fees that will be used for services subject to payment, including the basis and amount of payments, are those of the Departments of Health, Social Services, and Human Services for like services.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

Cross-References: Medical services, art 67:16; Children's special health services, art 44:06.

24:14:04:04. Entitled services. The ~~division~~ department may not charge fees for the services that a child is otherwise entitled to receive at no cost to parents. Agency jurisdictional disputes or the inability of the parents of an eligible child to pay for services may not result in the denial of services to the child or the child's family.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:05. Identification and coordination of resources. The ~~division~~ department is responsible for the identification and coordination of all available resources for early intervention services within the state, including those from federal, state, local, and private sources, and for updating the information on the funding resources to this article if a legislative or policy change is made under any of those funding resources.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:06. Federal funding sources. The federal funding sources that may be used for services listed in § 24:14:04:02 include the following, all as in effect on January 1, ~~2000~~ 2008:

- (1) Title V of the Social Security Act;
- (2) Title XIX of the Social Security Act;
- (3) The Head Start Act;

- (4) Individuals with Disabilities Education Act, Parts B and C;
- (5) The Developmental Disabilities Assistance and Bill of Rights Act, Pub. L. No. 94-103;
- (6) Department of Human Services, DD Block Grant, Division of Mental Health, and Pub. L. No. 102-231; and
- (7) Other federal programs.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:06.01. Proceeds from public or private insurance. Proceeds from public or private insurance are not treated as program income for purposes of 34 C.F.R. 80.25, as amended to January 1, ~~2000~~ 2008. If a public agency spends reimbursements from federal funds, such as Medicaid, for services under this article, those funds are not considered state or local funds for purposes of the maintenance of effort provisions of this article.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:07. Interagency agreements. The ~~division~~ department shall enter into formal interagency agreements with other state level agencies involved in the ~~infants and toddlers~~ Part C program. These agreements, at a minimum, must address financial responsibility for paying for services and procedures for resolving disputes on matters pertaining to the statewide ~~system~~ program.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:08. Agency resolution of disputes. The ~~division~~ department shall ensure resolution of individual disputes in accordance with the procedures in this chapter. This includes intra- and interagency disputes about payments for a given service or disputes about other matters related to the state's system of coordinated interagency services.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:11. Service provision during pendency of dispute. During the pendency of a dispute, if necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, the ~~division~~ department may use funds from this program to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:04:12. Rate of payment for provision of early intervention services. Except as identified under § 24:14:04:10, funds under this article must be used to provide payment for the provision of early intervention services that meet the requirements under §§ 24:14:08:01 to 24:14:08:20, inclusive. Payment is limited to the provider's usual and customary charge or ~~the following~~ 135 percent of the established Medicaid rates, whichever is lower. Rates identified are for a 15-minute unit of service. Fractions of a unit are rounded up to the next unit. A provider may bill for services only if the recipient was present.

Service

Rate

Assistive technology service and device	Usual and customary charge
Audiology services	\$28.50
Family training, counseling, and home visits	\$17.50
Health services	\$17.00
Nursing services	\$17.00
Nutrition services	\$18.00
Occupational therapy	\$18.00
Physical therapy	\$18.00
Psychological services	\$19.00
Social work services	\$17.50
Special instruction	\$ 8.00
Speech and language services	\$18.00
Service coordination	\$ 8.00
Vision services	\$20.00
Medical for diagnostic purposes	\$28.25

Source: 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1

24:14:04:15. Services provided by paraeducators. Paraeducators are reimbursed at ~~the lesser of their usual and customary charge or \$6.00 per unit of service~~ 75 percent of the provider rate for special instruction established under this chapter.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1

24:14:04:19. Payment above established rate. In order to ensure the provision of services, a provider may be reimbursed at a higher rate if documentation submitted shows that no other options are available. The Department of Education ~~and Cultural Affairs~~ must provide written approval of a higher reimbursement rate before the provision of services. The Department of Education ~~and Cultural Affairs~~ may revoke this approval at anytime after giving the provider 30 days written notice. The approval is in effect for a maximum of one year.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1

CHAPTER 24:14:05

REPORTING REQUIREMENTS

Section

- 24:14:05:01 Data collection.
- 24:14:05:02 Contents of client information report.
- 24:14:05:03 to 24:14:05:06 Repealed.
- 24:14:05:07 Information repository.

24:14:05:01. Data collection. The ~~division~~ department shall compile data on the ~~early intervention~~ Part C program for infants and toddlers with disabilities necessary to fulfill federal reporting requirements and other state reporting purposes. The data collection system includes a process for collecting data from various agencies and service providers in South Dakota and provides for the reporting of data required under 20 U.S.C. § ~~1476(b)(14)~~ 1435(a)(14) of the Individuals with Disabilities Education Act ~~1997~~ 2004 and other information that the federal agency may require, including information required under § 1418 of the Individuals with Disabilities Education Act ~~1997~~ 2004. The ~~division~~ department shall report the information required in ~~paragraph (a)(2) of 34 C.F.R. § 303.540 as published on 58 Fed. Reg. 40,980, April 14, 1998,~~ to the United States Department of Education at the time and in the manner specified by the United States Department of Education.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:05:02. Contents of client information report. The contractor shall submit to the ~~division~~ department the following information on each child found eligible for services under this program for whom a current individual family service plan is in effect on December 1 of that calendar year:

- (1) Date of birth;
- (2) Criteria on which eligibility for the Individuals with Disabilities Education Act, Part C program was determined;
- (3) Types of services provided to the child and the child's family through the ~~early intervention~~ Part C program;
- (4) The primary setting in which early intervention services are provided;
- (5) Data on infants and toddlers who ~~exited the program in the past 12 months~~ stopped receiving early intervention services because of program completion or for other reasons;
- (6) ~~Race/ethnicity~~ Race, gender, and ethnicity; and
- (7) Other information required by the United States secretary of education under § 1418 of the Individuals with Disabilities Education Act ~~1997~~ 2004.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:05:07. Information repository. The ~~division~~ department shall aggregate all information submitted by the contractor for the preparation and dissemination of summary reports to the United States Department of Education, the South Dakota Interagency Coordinating Council, and to other state agencies upon request.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

CHAPTER 24:14:07

DEVELOPMENTAL DELAY

Section

24:14:07:01 Informed clinical opinion.

24:14:07:02 Children eligible for services.

24:14:07:03 Areas manifesting developmental delay.

24:14:07:04 Eligibility verification.

24:14:07:01. Informed clinical opinion. The opinions of qualified personnel from a variety of disciplines, chosen on the basis of child and family strengths and needs, including the following, are considered informed clinical opinion:

- (1) Audiologists;
- (2) Family therapists;
- (3) Nurses;
- (4) ~~Nutritionists~~ Registered dietitians;
- (5) Occupational therapists;
- (6) Orientation and mobility specialists;
- (7) Pediatricians and other physicians;
- (8) Physical therapists;
- (9) Psychologists;
- (10) Social workers;
- (11) Special educators; ~~and~~
- (12) Speech and language pathologists; and
- (13) Vision specialists, including ophthalmologists and optometrists.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:07:02. Children eligible for services. Infants and toddlers, birth to 36 months of age, inclusive, are eligible for services under this chapter when identified by providers of licensed health care and education services as:

- (1) Performing at 25 percent below normal age range;
- (2) Exhibiting a six-month delay;
- (3) Demonstrating at least a 1.5 standard deviation below the mean; or
- (4) Having a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

A determination of diagnosed physical or mental condition that has a high probability of resulting in developmental delay shall be based on medical diagnoses, including Down syndrome and other chromosomal abnormalities; sensory impairments, including vision and hearing; inborn errors of metabolism; microcephaly; severe attachment disorders, including failure to thrive; seizure disorders; and fetal alcohol syndrome.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

Cross-Reference: Programs for children under age three, § 24:05:22:04.

24:14:07:03. Areas manifesting developmental delay. Developmental delay may be manifested in one or more of the following areas:

- (1) Cognitive development;
- (2) Communication development - receptive or expressive, or both;
- (3) Social or emotional development;
- (4) Adaptive development; and
- (5) Physical development, including vision and hearing.

~~Determinations of developmental delay shall be based on medical diagnoses, including Down's syndrome and other chromosomal abnormalities; sensory impairments, including vision and hearing; inborn errors of metabolism; microcephaly; severe attachment disorders, including failure to thrive; seizure disorders; and fetal alcohol syndrome.~~

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

CHAPTER 24:14:08

EARLY INTERVENTION SERVICES

Section

24:14:08:01	General requirements for early intervention services.
24:14:08:02	Natural environments.
24:14:08:03	General role of service providers.
24:14:08:04	Types of early intervention services.
24:14:08:05	Audiology services.
24:14:08:06	Service coordination.
24:14:08:07	Family training, counseling, and home visits.
24:14:08:08	Medical services for diagnosis or evaluation.
24:14:08:09	Nursing services.
24:14:08:10	Nutrition services.
24:14:08:11	Occupational therapy.
24:14:08:12	Physical therapy.
24:14:08:13	Psychological services.
24:14:08:14	Social work services.
24:14:08:15	Special instruction.
24:14:08:16	Speech-language pathology.
24:14:08:17	Transportation and related costs.
24:14:08:18	Vision services.

24:14:08:19 Assistive technology devices and services.

24:14:08:20 Health services.

24:14:08:21 Other services.

24:14:08:16. Speech-language pathology. Speech-language pathology includes the following:

(1) Identification of a child with communicative or oral pharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oral pharyngeal disorders and delays in development of communication skills; ~~and~~

(3) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oral pharyngeal disorders and delays in development of communication skills; and

(4) Provision of sign language and cued language services.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:08:17. Transportation and related costs. Transportation and related costs include the cost of travel, including mileage or travel by taxi, common carrier, or other means and the related tolls and parking expenses that are necessary to enable a child eligible under this article and the child's family to receive early intervention services.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:08:19. Assistive technology devices and services. An assistive technology device, notwithstanding §§ 24:05:27:18 and 24:05:27:19, is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, including cochlear implants, or the optimization (e.g., mapping) or the maintenance or replacement of that device.

Assistive technology services directly assist a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; purchasing,

leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a child with disabilities or, if appropriate, that child's family; and training or technical assistance for professionals or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

CHAPTER 24:14:10

COMPREHENSIVE CHILD FIND SYSTEM

Section

- | | |
|-----------------------------|-----------------------------------|
| 24:14:10:01 | Comprehensive child find system. |
| 24:14:10:02 and 24:14:10:03 | Repealed. |
| 24:14:10:04 | Coordination with state agencies. |
| 24:14:10:05 | Repealed. |

24:14:10:01. Comprehensive child find system. The ~~division~~ department, with the advice and assistance of the Council, shall implement a child find system that locates, identifies, and evaluates all infants and toddlers with disabilities.

The contractor shall develop and implement a comprehensive local child find system for infants and toddlers, aged birth through two, within their geographic boundaries. The local child find system must be consistent with this article concerning location, identification, and screening of all infants and toddlers eligible for services under chapter 24:14:07. The contractor shall assist with the identification of children who are receiving needed early intervention services.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:10:04. Coordination with state agencies. The ~~division~~ department, with the assistance of the state interagency coordinating council, shall coordinate the child find system under this chapter with all other major efforts to locate and identify children conducted by other state agencies responsible for administering the various education,

health, and social services programs relevant to this chapter, including efforts in the following:

(1) Assistance to the state program under Part B of the Individuals with Disabilities Education Act;

(2) Maternal and child health program under Title V of the Social Security Act as ~~in effect on January 1, 2000~~ amended to January 1, 2008;

(3) Medicaid's early periodic screening, diagnosis, and treatment program under Title XIX of the Social Security Act as ~~in effect on January 1, 2000~~ amended to January 1, 2008;

(4) Developmental disabilities assistance and Bill of Rights Act as ~~in effect on January 1, 2000~~ amended to January 1, 2008;

(5) Head Start Act, including Early Head Start programs, as ~~in effect on January 1, 2000~~ amended to January 1, 2008;

(6) Supplemental security income program under Title XVI of the Social Security Act as ~~in effect on January 1, 2000~~ amended to January 1, 2008;

(7) Child protection programs, including programs administered by, and services provided through, the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act as amended to January 1, 2008; and

(8) Child care programs in the state.

The ~~division~~ department shall enter into interagency agreements to implement this provision. In addition, the ~~division~~ department shall monitor ~~early intervention~~ Part C programs for compliance with the requirements of this chapter.

The ~~division~~ department, with the advice and assistance of the state interagency coordinating council, shall develop interagency agreements to ensure that there is no unnecessary duplication of efforts by the various agencies involved in the state's child find system under this article and that the state makes use of the resources available through each public agency in the state to implement the child find system.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

Cross-References:

Special education programs for children under age three, § 24:05:22:04.

Children's special health services, art 44:06.

Early and periodic screening, ch 67:16:11.

CHAPTER 24:14:13

INDIVIDUAL FAMILY SERVICE PLAN

Section

- 24:14:13:01 Individual family service plan requirements.
- 24:14:13:02 ~~Division's~~ Department's responsibility.
- 24:14:13:03 Development, review, and evaluation of individual family service plan.
- 24:14:13:04 Content of individual family service plan.
 - 24:14:13:04.01 Natural environment.
- 24:14:13:05 Transition from ~~early intervention~~ Part C program.
- 24:14:13:06 Participation in individual family service plan meetings and periodic reviews.
- 24:14:13:07 Provision of services before completion of evaluation and assessment.
- 24:14:13:08 Responsibility and accountability for individual family service plan.

24:14:13:02. ~~Division's~~ Department's responsibility. The ~~division~~ department shall monitor agencies, institutions, and organizations used by the state to carry out this

article on the development and implementation of individual family service plans for eligible children. If there is a dispute between agencies as to who has responsibility for developing or implementing an individual family service plan, the ~~division~~ department shall resolve the dispute.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:13:04. Content of individual family service plan. The individual family service plan must contain the following:

(1) A statement of the child's present levels of physical development, including vision, hearing, and health status; cognitive development; communication development; social or emotional development; and adaptive skills, based on multidisciplinary evaluation data;

(2) With the concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child;

(3) A statement of the ~~major~~ measurable results or outcomes expected to be achieved for the child and family, including pre-literacy and language skills, as

developmentally appropriate for the child, and the criteria, procedures, and ~~schedules~~ timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

(4) A statement of the specific early intervention services based on scientific research, to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the outcomes, including the frequency; intensity; natural environments in which the early intervention services will be provided and a justification of the extent, if any, to which the services will not be provided in a natural environment; location; method of delivering the services; and any payment arrangements;

(5) To the extent applicable, the medical and other services that the child needs that are not required under this article and, if necessary, the funding sources that will be used to secure those services through public or private resources. This requirement does not apply to routine medical services unless a child needs those services and the services are not otherwise available or being provided;

(6) The projected dates for initiation of the services and the anticipated length, duration, and frequency of those services; ~~and~~

(7) The name of the service coordinator from the profession most immediately relevant to the child's or family's needs or who is otherwise qualified who is responsible

for the implementation of the individual family service plan and coordination with other agencies and persons, including transition services. A different service coordinator may be appointed at any time; and

(8) The steps to be taken to support the transition of the child to preschool or other appropriate services.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:13:04.01. Natural environment. To the maximum extent appropriate, early intervention services are provided in natural environments. The provision of early intervention services for an infant or toddler ~~may~~ occur in a setting other than a natural environment that is most appropriate, as determined by the parent and IFSP team, only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

Source: 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:13:05. Transition from ~~early intervention~~ Part C program. The IFSP team shall ensure the transition of children participating in the ~~early intervention~~ Part C program under this article who are eligible for participation in preschool programs under Part B of Individuals with Disabilities Education Act as ~~in effect on July 1, 2000~~ amended to January 1, 2008. This requirement includes the transition of children to other appropriate services if they will not be receiving preschool services under Part B of IDEA. The IFSP must include the following steps to support the transition of the child:

- (1) Describe how the families will be included in the transitional plans;
- (2) Discuss with and train parents regarding future placements and other matters relating to the child's transition;
- (3) Notify the appropriate local education agency in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of IDEA, as determined in accordance with state law, of the need for transitional planning;
- (4) With the approval of the family, convene a conference between the IFSP team, family, and local educational agency at least 90 days and at the discretion of the parties, ~~up to 6~~ and not more than nine months before the child is eligible for the preschool program under Part B of Individuals with Disabilities Education Act, in accordance with state law. In the case of a child who may not be eligible for preschool services under Part

B of IDEA, with the approval of the family, make reasonable efforts to convene a conference among the IFPS team, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B of IDEA, to discuss the appropriate services that the child may receive;

(5) Review the child's program options for the period beginning on the day the child turns three and running through the remainder of the school year; and

(6) Prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting.

The local school district must provide the family with information on the eligibility and evaluation requirements under Part B of Individuals with Disabilities Education Act, including the parent's and district's rights regarding procedural safeguards. Information may be transmitted upon consent of the parent or guardian.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

Cross-Reference: Transition to preschool program, § 24:05:27:21.

24:14:13:06. Participation in individual family service plan meetings and periodic reviews. The initial meeting and each annual meeting to evaluate the individual family service plan must include the following participants:

- (1) The parent or parents of the child;
- (2) Other family members, as requested by the parent, if feasible;
- (3) An advocate or person outside the family, if the parent requests that the person participate;
- (4) The service coordinator who has been working with the family since the initial referral of the child for evaluation or who has been designated by the contractor to be responsible for implementation of the individual family service plan;
- (5) A person or persons directly involved in conducting evaluations and assessments; ~~and~~
- (6) As appropriate, the person or persons who will be providing services to the child or family;
- (7) A school district representative at the initial eligibility determination; and
- (8) A school district representative if the child is in need of prolonged assistance.

If a person listed in subdivision (5) of this section is unable to attend a meeting, the person shall participate by a telephone call, by having a knowledgeable authorized representative attend the meeting, or by making pertinent records available for the meeting.

Each periodic review must provide for the participation of the persons listed in subdivisions (1) to (4), inclusive, of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in this section.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

CHAPTER 24:14:14

PROCEDURAL SAFEGUARDS

Section

- 24:14:14:01 Repealed.
- 24:14:14:01.01 Consent.
- 24:14:14:02 Opportunity to examine records.
- 24:14:14:03 Prior notice.
- 24:14:14:04 Native language.
- 24:14:14:05 Parental consent.
- 24:14:14:06 Parents' right to decline service.
- 24:14:14:07 Surrogate parent.
- 24:14:14:08 Repealed.
- 24:14:14:09 Assigning a surrogate parent.

24:14:14:10 Surrogate not to be employee of agency.

24:14:14:11 Responsibilities of surrogate parent.

24:14:14:12 ~~Administrative hearings~~ Repealed.

24:14:14:13 ~~Hearing issues~~ Repealed.

24:14:14:14 ~~Initiating an administrative hearing~~ Repealed.

24:14:14:15 Mediation process.

24:14:14:16 Appointment of mediator.

24:14:14:16.01 Mediation agreement.

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24:14:14:16.03 Filing a due process complaint.

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24:14:14:16.20 Impartial due process hearing.

24:14:14:16.21 Subject matter of due process hearings.

24:14:14:16.22 Timeline for requesting a due process hearing.

24:14:14:16.23 Impartial hearing officer.

24:14:14:16.24 Decision of hearing officer.

24:14:14:17 ~~Conflicts of interest prohibited~~ Repealed.

24:14:14:18 Hearing rights.

24:14:14:18.01 Additional disclosure of information.

24:14:14:18.02 Attorney fees.

24:14:14:19 Convenience of hearing.

24:14:14:20 Timelines for hearing.

24:14:14:21 Appeal of administrative decision.

24:14:14:22 Status of child during proceedings.

24:14:14:01.01. Consent. Consent means that:

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists any records that will be released and to whom; ~~and~~

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and

(4) If a parent revokes consent, that revocation is not retroactive. It does not apply to an action that has occurred before the consent was revoked.

Source: 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:02. Opportunity to examine records. The parents of an eligible child, who is referred to or receives services under this article, must be afforded the opportunity to inspect and review all Part C records about the child and the child's family that are collected, maintained, or used under Part C including records relating to screening, evaluations and assessments, eligibility determinations, development and implementation of individual family service plan, provision of early intervention services, individual complaints dealing with the child, ~~and any other area involving records about the child and the child's family~~ or any part of the child's early intervention record under Part C.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:03. Prior notice. Written prior notice must be given to the parents of a child eligible under this article five working days before a public agency or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child or the provision of appropriate early intervention services to the child and the child's family. The notice must be in sufficient detail to inform the parents of the action that is being proposed or refused, the reasons for taking the action, and all procedural safeguards that are available under this article, and the including a description of mediation, how to file a state complaint, a due process complaint, and any timelines under those procedures.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:04. Native language. Prior notice must be given to the parents of a child eligible under this article in written language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so. If the native language or other mode

of communication of the parent is not a written language, the service coordinator shall ensure the following:

- (1) Notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- (2) The parent understands the notice; and
- (3) There is written evidence that the requirements of this section have been met.

If a parent is deaf or blind or has no written language, then the mode of communication must be that normally used by the parent, including sign language, braille, or oral communication.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:07. Surrogate parent. The rights of an eligible child must be protected by a surrogate parent if no parent can be identified and the contractor, after reasonable effort, cannot ~~discover the whereabouts of~~ locate a parent or if the child is a ward of the state.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

Cross-References: Surrogate parent defined, SDCL 13-37-2.1; Surrogate parent acting in place of parent, SDCL 13-37-27.

24:14:14:12. Administrative hearings. ~~Each agency, institution, or organization used by the state to carry out this article must follow contested case procedures in SDCL chapter 1-26 for the timely administrative resolution of complaints by parents concerning their individual children and any matters in this article~~ Repealed.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

~~**General Authority:** SDCL 13-37-1.1.~~

~~**Law Implemented:** SDCL 13-1-23, 13-14-1, 13-37-1.1.~~

24:14:14:13. Hearing issues. ~~A parent may initiate an administrative hearing on any issues involving the identification, evaluation, placement, or provision of appropriate early intervention services to an eligible child or the child's family. Hearings regarding Part C of IDEA are not eligible for attorney fees. School districts assume financial responsibility only in issues regarding children in need of prolonged assistance~~ Repealed.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: ~~SDCL 13-37-1.1.~~

Law Implemented: ~~SDCL 13-1-23, 13-14-1, 13-37-1.1.~~

Cross-Reference: ~~Special education, art 24:05.~~

24:14:14:14. Initiating an administrative hearing. ~~A parent may initiate a hearing by notifying the state director of special education in writing of the request for an administrative hearing pursuant to SDCL chapter 1-26.~~

~~The division shall immediately notify the parents of the availability of mediation described in this chapter. The state director of special education shall appoint an impartial due process hearing officer to conduct the hearing. Either party may request a one-time change in the hearing officer appointed to hear the case. The request must be in writing and submitted to the state director of special education within five working days after receipt of notice of the initial appointment Repealed.~~

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: ~~SDCL 13-37-1.1.~~

Law Implemented: ~~SDCL 13-1-23, 13-14-1, 13-37-1.1.~~

24:14:14:15. Mediation process. ~~Within five working days after receipt of a written request for a hearing pursuant to this chapter, the state director of special education may initiate steps to conduct a mediation conference. Either party, as well as~~

~~the state director of special education, may waive the mediation conference~~ The department shall ensure that procedures are established and implemented to allow parties to disputes involving any matter under this article, including matters arising before the filing of a due process complaint, to resolve disputes through a mediation process.

Procedures for mediation are as follows:

(1) The state director of ~~special education~~ the Part C program shall ensure that mediation is viewed as voluntary and freely agreed to by both parties and is in no way used to deny or delay an aggrieved party's right to a hearing on a parent's due process complaint, or to deny any other rights afforded under this article; and

(2) The mediation conference is an intervening, informal process conducted in a nonadversarial atmosphere, scheduled in a timely manner, and held in a location that is convenient to the parties in dispute;

~~(3) The mediation must be completed within 15 calendar days after receipt by the state director of special education of the request for the hearing;~~

~~(4) Either party to the mediation conference may request the hearing officer to grant a continuance. Such a continuance shall be granted upon a showing of good cause. A continuance may not extend the 45 calendar day maximum for completion of the due process hearing and rendering of the final administrative decision unless the party initiating the request for the hearing is agreeable to such an extension;~~

~~(5) The mediation resolution may not conflict with state or federal law and must be to the satisfaction of both parties. Satisfaction shall be indicated by the signatures of both parties on the written resolution;~~

~~(6) A copy of the written resolution shall be mailed by the mediator to each party within 5 calendar days following the mediation conference. A copy shall also be filed by the mediator with the state director of special education;~~

~~(7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge before the commencement of the process; and~~

~~(8) Mediation, at a minimum, must be available whenever a hearing is requested under this chapter.~~

The state shall bear the cost of the mediation process, including the costs of meetings described in ~~subdivision 24:14:14:15(2)~~ § 24:14:14:16.02.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16. Appointment of mediator. The mediation process shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The ~~division~~ department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of ~~special education and related~~ Part C services. Mediators shall be selected on a random, rotational, or other impartial basis ~~from the list~~. An individual who serves as a mediator:

(1) May not be an employee of: the department, a public agency, or a nonpublic service provider that is involved in the provision of early intervention or other services to the child

~~(a) Any school district or state agency described under this article; or~~

~~(b) The division, if the division is providing direct services to a child who is the subject of the mediation process; and~~

(2) May not have a personal or professional ~~conflict of interest~~ that conflicts with the person's objectivity.

A person who otherwise qualifies as a mediator is not an employee of ~~a district or state agency~~ the department, a public agency, or a nonpublic service provider solely because the person is paid by the ~~division~~ department to serve as a mediator.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.01. Mediation agreement. If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth that resolution and that:

(1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court; and

(2) Is signed by both the parent and a representative of the agency who has the authority to bind the agency.

A written, signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.02. Meeting to encourage mediation. The department may establish procedures to offer to parents and a public agency or nonpublic service provider who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(1) Who is under contract with a parent training and information center or community parent resource center in the state, or an appropriate alternative dispute resolution entity; and

(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.03. Filing a due process complaint. A parent, a public agency, or a nonpublic service provider may file a due process complaint on any matters relating to the identification, evaluation or placement of a child eligible under this article, or the provision of early intervention services to the child and his or her family.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.04. Timeline for filing a due process complaint. A due process complaint shall allege a violation that occurred not more than two years before the date the parent, a public agency, or a nonpublic service provider knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:

(1) Specific misrepresentations by a public agency or a nonpublic service provider that it had resolved the problem forming the basis of the due process complaint;
or

(2) A public agency's or a nonpublic service provider's withholding of information from the parent that was required under this chapter to be provided to the parent.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.05. Free or low-cost services to parent. The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent, a public agency, or nonpublic service provider files a due process complaint under this chapter or the parent requests the information.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.06. Due process complaint notice. A public agency or nonpublic service provider must have procedures that require either party or the attorney representing a party, to provide to the other party a due process complaint, which must remain confidential. The party filing a due process complaint shall forward a copy to the department.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.07. Content of due process complaint notice. The notice required in § 24:14:14:16.06 must include:

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the Part C service provider serving the child;

(4) In the case of a homeless child, available contact information for the child, and the name of the Part C service provider serving the child;

(5) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.08. Sufficiency of complaint. The due process complaint required is deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in § 24:14:14:16.07.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.09. Decision on sufficiency of complaint. Within five days of receipt of the notification under § 24:14:14:16.08, the hearing officer shall make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of § 24:14:14:16.07 and shall immediately notify the parties in writing of that determination.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.10. Amendment to due process complaint. A party may amend its due process complaint only if:

(1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting held under § 24:14:14:16.13; or

(2) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

If a party files an amended due process complaint, the timelines for the resolution meeting and the time period for resolving the complaint begin again with the filing of the amended due process complaint.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.11. Agency or provider response to due process complaint. If a public agency or nonpublic service provider has not sent a prior written notice under this chapter to the parent regarding the subject matter contained in the parent's due process complaint, the public agency or nonpublic service provider shall, within 10 days of receiving the due process complaint, send to the parent a response that includes:

(1) An explanation of why the public agency or nonpublic service provider proposed or refused to take the action raised in the due process complaint;

(2) A description of other options that the IFSP Team considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, assessment, record, or report the public agency or nonpublic service provider used as the basis for the proposed or refused action; and

(4) A description of the other factors that are relevant to the public agency's or nonpublic service provider's proposed or refused action.

A response by the public agency or nonpublic service provider under this section does not preclude the public agency or nonpublic service provider from asserting that the parent's due process complaint was insufficient, if appropriate.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.12. Other party response to due process complaint. Except as provided in § 24:14:14:16.11, the party receiving a due process complaint shall, within 10

days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16:13. Resolution meeting -- Participants. Within 15 days of receiving notice of the parent's due process complaint, and before the initiation of a due process hearing under this chapter, the public agency or nonpublic service provider shall convene a meeting with the parent and the relevant member or members of the IFSP team who have specific knowledge of the facts identified in the due process complaint. The meeting:

(1) Shall include a representative of the public agency or nonpublic service provider who has decision-making authority on behalf of the public agency or nonpublic service provider; and

(2) May not include an attorney of the public agency or nonpublic service provider unless the parent is accompanied by an attorney.

The parent and public agency or nonpublic service provider shall determine the relevant members of the IFSP team to attend the meeting.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.14. Resolution meeting -- Purpose. The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the public agency or nonpublic service provider has the opportunity to resolve the dispute that is the basis for the due process complaint.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.15. Resolution meeting -- Waive or mediate. The resolution meeting need not be held if:

- (1) The parent and the public agency or nonpublic service provider agree in writing to waive the meeting; or
- (2) The parent and the public agency or nonpublic service provider agree to use the mediation process described in this chapter.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.16. Resolution period - - General. If the public agency or nonpublic service provider has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in § 24:14:14:16.18, the timeline for issuing a final decision in a due process hearing begins at the expiration of the 30-day period.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding the above two paragraphs, the failure of the parent filing a due process complaint to participate in the resolution meeting delays the timelines for the resolution process and due process hearing until the meeting is held.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.17. Dismissal of complaint or initiation of hearing. If the public agency or nonpublic service provider is unable to obtain the participation of the parent in the resolution meeting after efforts have been made and documenting, its efforts, the public agency or nonpublic service provider may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

If the public agency or nonpublic service provider fails to hold the resolution meeting specified in § 24:14:14:16.13 within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.18. Adjustments to 30-day resolution period. The 30-day timeline for the due process hearing described in this chapter starts the day after one of the following events:

- (1) Both parties agree in writing to waive the resolution meeting;
- (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or

(3) If, after both parties agree in writing to continue the mediation at the end of the 30-day resolution period, the parent or public agency or nonpublic service provider withdraws from the mediation process.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.19 Written settlement agreement. If a resolution to the dispute is reached at the meeting described in § 24:14:14:16.13 and § 24:14:14:16.14, the parties shall execute a legally binding agreement that is:

(1) Signed by both the parent and a representative of the public agency or nonpublic service provider who has the authority to bind the public agency or nonpublic service provider; and

(2) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

If the parties execute an agreement pursuant to this section, a party may void the agreement within three business days of the agreement's execution.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.20. Impartial due process hearing. If a due process complaint is received under this chapter, the parents or the public agency or nonpublic service provider involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in this article.

The department is responsible for ensuring that a due process hearing is held.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.21. Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under this chapter, unless the other party agrees otherwise.

A parent may file a separate due process complaint on an issue separate from a due process complaint already filed.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.22. Timeline for requesting a due process hearing. A parent or a public agency or a nonpublic service provider shall request an impartial hearing on their due process complaint within two years of the date the parent or the public agency or the nonpublic service provider knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the exceptions in § 24:14:14:16.04 exist.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.23 Impartial hearing officer. A hearing may not be conducted by a person who is an employee of the department, a public agency or a nonpublic service provider, which is involved in the education or care of the child or by any person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

A hearing officer shall:

(1) Possess knowledge of, and the ability to understand, the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts;

(2) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(3) Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

An individual who otherwise qualifies to conduct a hearing is not an employee of the department solely because the individual is paid by the department to serve as a hearing officer.

The department shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:16.24. Decision of hearing officer. Subject to the provisions of this section, a hearing officer must make a determination, based on substantive grounds, of whether the child was appropriately identified, or evaluated, or placed, or whether the child with a disability and his or her family were appropriately provided early intervention services under Part C.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive appropriate identification, evaluation, placement, or provision of early intervention services for the child and the child's family under Part C only if the procedural inadequacies:

- (1) Impeded the child's right to appropriate early intervention services; or
- (2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding these matters; or
- (3) Caused a deprivation of educational or developmental benefit.

Nothing in this section precludes a hearing officer from ordering a public agency or a nonpublic service provider to comply with procedural requirements under this chapter.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:17. Conflicts of interest prohibited. ~~A hearing may not be conducted by a person who is an employee of a public agency that is involved in the education or care of the child or by any person having a personal, professional, or fiscal interest that would create a conflict of interest. An individual who otherwise qualifies to conduct a hearing is not an employee of the agency solely because the individual is paid by the agency to serve as a hearing officer. Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons~~ Repealed.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: ~~SDCL 13-37-1.1.~~

Law Implemented: ~~SDCL 13-1-23, 13-14-1, 13-37-1.1.~~

24:14:14:18.01. Additional disclosure of information. At least five business days prior to a hearing conducted under this chapter, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:18.02. Attorney fees. Due process hearings regarding Part C of IDEA are not eligible for attorney fees. School districts assume financial responsibility for attorney fees in a due process hearing, in accordance with § 24:05:30:11.01, only related to issues regarding children in need of prolonged assistance.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:19. Convenience of hearing. A proceeding for implementing the administrative hearing process in this chapter must be carried out at a time and place that is reasonably convenient to the parents and child involved.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:20. Timelines for hearing. The ~~division~~ department shall ensure that no later than 30 days after the ~~receipt of a parent's request for a hearing, the impartial~~

~~proceeding required under this chapter is completed and a written decision mailed to each of the parties and the division~~ expiration of the 30-day period under § 24:14:14:16.16 or adjusted time period described in § 24:14:14:16.18, a final decision is reached on the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the periods set out in this section at the requests of either party.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:14:21. Appeal of administrative decision. Any party aggrieved by the decision of the hearing officer under this article may bring a civil action under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415~~(e)(1)~~ (i)(2) as in effect on ~~June 4, 1997~~ December 3, 2004. A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action has 90 days from the date of a hearing officer's decision to file a civil action. In any action brought under this section, the court:

- (1) Shall review the records of the administrative proceedings;
- (2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in Part C of the Individuals with Disabilities Education Act restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws, seeking relief that is also available under section 615 of IDEA, the procedures under this chapter for a due process hearing must be exhausted to the same extent as would be required had the action been brought under section 615 of IDEA.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

CHAPTER 24:14:16

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Section

24:14:16:01 Comprehensive system of personnel development.

24:14:16:02 Personnel standards.

24:14:16:03 Shortage of personnel.

24:14:16:01. Comprehensive system of personnel development. ~~The procedures in chapter 24:05:16 for implementing the state's comprehensive system of personnel development under Part B of Individuals with Disabilities Education Act apply to infants and toddlers.~~

The department shall ensure the development and implementation of a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the state.

The comprehensive system of personnel development shall include:

(1) Implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this article; and

(3) Training personnel to coordinate transition services for infants and toddlers served under this article from a program providing early intervention services under this article to a preschool program receiving funds under article 24:05, or another appropriate program.

The comprehensive system of personnel development may include training personnel to work in rural and inner-city areas and training personnel in the emotional and social development of young children.

Source: 20 SDR 233, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:16:02. Personnel standards. Procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained are contained in chapter 24:05:16.

Early intervention services must be provided by qualified personnel, including the following:

- (1) Audiologists;
- (2) Nurses;

- (3) ~~Nutritionists~~ Registered dietitians;
- (4) Occupational therapists;
- (5) Physical therapists;
- (6) Pediatricians and other physicians;
- (7) Psychologists;
- (8) Social workers;
- (9) Special educators;
- (10) Speech and language pathologists;
- (11) Family therapists; ~~and~~
- (12) Orientation and mobility specialists; and
- (13) Vision specialists, including ophthalmologists and optometrists.

Source: 20 SDR 233, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

24:14:16:03. Shortage of personnel. The department may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the state where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet state standards.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.